

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA**

CRIMINAL JUSTICE ACT PLAN

I. AUTHORITY

Pursuant to the Criminal Justice Act (CJA) of 1964, as amended, 18 U.S.C. § 3006A, and the Guidelines for the Administration of the Criminal Justice Act, Volume VII, Guide to Judiciary Policies and Procedures (CJA Guidelines), the judges of the United States District Court for the Southern District of Alabama, adopt this Plan for furnishing representation in federal court for any person financially unable to obtain adequate representation in accordance with the CJA.

II. STATEMENT OF POLICY

A. Objectives.

1. The objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime, or otherwise eligible for services pursuant to the CJA, will not be deprived, because they are financially unable to pay for adequate representation, of any element of representation necessary to an adequate defense.

2. The further objective of this Plan is to particularize the requirements of the CJA, the Anti-Drug Abuse Act of 1988 (21 U.S.C. § 848(q)), and the CJA Guidelines in a way that meets the needs of this District.

B. Compliance.

1. The Court, its Clerk, the Community Defender Organization (CDO), and private attorneys appointed under the CJA shall comply with the CJA Guidelines approved by the Judicial Conference of the United States and/or its Committee on Defender Services and with this Plan.

2. Each private attorney shall be provided by the Clerk of Court with a current copy of this Plan upon the attorney's first appointment under the CJA or designation as a member of the Panel of Private Attorneys under the Criminal Justice Act (CJA Panel). The Clerk shall maintain a current copy of the CJA Guidelines for the use of members of the CJA Panel and shall make known to such attorneys its availability.

III. DEFINITIONS.

- A. “Representation” includes counsel and investigative, expert, and other services.
- B. “Appointed attorney” includes private attorneys, the federal defender and staff attorneys of the Community Defender Organization.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

- 1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor;
 - b. is a juvenile alleged to have committed an act of juvenile delinquency as defined in 18 U.S.C. § 5031;
 - c. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - d. is under arrest, when such representation is required by law;
 - e. is entitled to appointment of counsel in parole proceedings;
 - f. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - g. is subject to a mental condition hearing under chapter 313 of title 18, United States Code;
 - h. is in custody as a material witness;
 - i. is seeking to set aside or vacate a death sentence under 28 U.S.C. § 2254 or 2255;
 - j. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under 18 U.S.C. § 4109;
 - k. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - 1. faces loss of liberty in a case and federal law requires the appointment of counsel.
- 2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under 28 U.S.C. §§ 2241, 2254, or 2255;
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal

- agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal, prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
- e. is proposed by the United States attorney for processing under a pretrial diversion program;
 - f. is held for international extradition under chapter 209 of title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the CJA.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the CJA, whichever occurs earliest.

C. Number and Qualification of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, at least two attorneys should be appointed.

2. Qualifications. Except as provided by 21 U.S.C. S 848(q)(7), at least one attorney appointed in a capital case shall meet the qualification requirements set forth in 21 U.S.C. §§ 848(q)(5) and (6). Pursuant to S 848(q) (7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under SS 848(q)(5) and (6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.

D. Eligibility for Representation.

1. Factfinding. The determination of eligibility for representation under the CJA is a judicial function to be performed by a judge or magistrate judge after making appropriate inquiries concerning the persons financial condition.

2. Disclosure of Change in Eligibility. If, at any time after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. COMMUNITY DEFENDER ORGANIZATION

A. Establishment. The Court has determined that the use of a Community Defender

Organization as defined in 18 U.S.C. § 3006(A)(g)(2)(B), will facilitate the representation of persons entitled to the appointment of counsel under the CJA. This Court finds that the Southern District Federal Defender Program, Inc., an Alabama not for profit corporation, whose bylaws are attached to this plan and incorporated herein by reference, is a non-profit defense counsel service established and administered to provide legal representation, and is otherwise eligible under the CJA to qualify as the community defender organization for the Southern District of Alabama.

Therefore, subject to: (1) the approval of this plan by the Judicial Council of the Eleventh Circuit, and (2) approval of the application of the Southern District Federal Defender Program, Inc. for periodic sustaining grants by the Judicial Conference of the United States, the Court designates the Southern District Federal Defender Program, Inc. as the community defender organization for the Southern District of Alabama to act in that capacity beginning at such time as this Court notifies the organization in writing that the above stated conditions have been met. The Court may nevertheless review the continued eligibility of the Southern District Federal Defender Program, Inc. from time to time, and may at any time by order and on reasonable notice terminate its designation as the community defender organization for the Southern District of Alabama.

B. Supervision of Defender Organization. The federal defender shall be responsible for the supervision and management of the Community Defender Organization. Accordingly, the federal defender shall be appointed in all cases assigned to that organization for subsequent assignment to staff attorneys at the discretion of the federal defender.

C. CDO Staff Attorneys. The CDO shall furnish to the court a list of the attorneys on its staff who will be subject to appointment as counsel for defendants under this Plan, including a certificate that such attorneys are competent to give adequate representation to parties under the Criminal Justice Act and this Plan. The Court may from time to time make such inquiries and request such information as may be needed to ensure effective and competent representation. Any change in this list of attorneys must be reported promptly to the court by way of a revised listing, similarly certified.

D. Ratio of Appointments. The CDO shall receive approximately 75% of the appointments under the CJA annually throughout the District in cases in which the accused is determined to be financially eligible for representation under the CJA.

VI. PRIVATE ATTORNEYS

A. Establishment of CJA Panel. The existing, previously established panel of attorneys (CJA panel) who are eligible and willing to be appointed to provide representation under the CJA is hereby recognized.

B. Organization. The Plan for the Composition, Administration, and Management of the Panel of Private Attorneys under the Criminal Justice Act is found at Appendix I of this CJA Plan.

C. Ratio of Appointments. Where practical and cost effective, private attorneys from the CJA

Panel shall be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. “Substantial” shall usually be defined as approximately 25% of the appointments under the CJA annually throughout the District.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254.

A. Appointment of Counsel. The court shall appoint the director of the Alabama Capital Representation Resource Center, Inc., or the federal defender with his or her consent or other attorney who qualifies for appointment pursuant to 21 U.S.C. §848(q) to represent financially eligible persons seeking habeas corpus relief in state death penalty proceedings under 28 U.S.C. § 2254.

B. Alabama Capital Representation Resource Center, Inc.

1. Establishment. The Alabama Capital Representation Resource Center, Inc., located in Montgomery, Alabama, previously designated as a community defender organization pursuant to the provisions of the CJA, is hereby recognized as the resource center for the district.

2. Organization and Supervision. The Alabama Capital Representation Resource Center, Inc. shall be organized and supervised in accordance with the addendum to the plan for the implementation of the Criminal Justice Act as authorized by order of this Court dated May 24, 1988, found at Appendix II of this CJA plan.

VIII. DUTIES OF APPOINTED COUNSEL

A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.

B. Professional Conduct. Attorneys appointed pursuant to the CJA shall conform to the highest standards of professional conduct, including but not limited to the provisions of the American Bar Association’s Model Rules of Professional Conduct and the American Bar Association’s Model Code of Professional Conduct.

C. No Receipt of Other Payment. Appointed counsel may not require, request, or accept any payment or promise of payment or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

D. Continuing Representation. Once counsel is appointed under the CJA, counsel shall continue the representation until the matter, including appeals or review by certiorari, is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed pro se; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES

Presentation of Accused for Appointment of Counsel. Prior to a defendant's first scheduled court appearance, if it becomes known to an Assistant United States Attorney, a Deputy United States Marshal, other law enforcement officers, or a representative of the U. S. Probation Office or U. S. Pretrial Services Office, that the defendant desires representation by an attorney, but claims to be unable to afford such service, the individual receiving notice shall promptly notify the federal defender who shall discuss with the defendant the right to representation and the right to appointed counsel, and if appointment of counsel seems likely, assist in the completion of a financial affidavit (CJA Form 23) and arrange to have the defendant promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.

X. MISCELLANEOUS

A. Forms. Standard forms, pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings under this Plan.

B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form, to the office of the clerk of the court. That office shall review the claim form for mathematical and technical accuracy and for conformity with the CJA Guidelines, and, if correct, shall forward the claim form for the consideration of the appropriate judge or magistrate judge. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.

C. Supersession. This Plan supersedes all prior Criminal Justice Act Plans of this court.

XI. EFFECTIVE DATE

This Plan shall become effective when approved by the Judicial Council of the Eleventh Circuit Court of Appeals.

APPENDICES:

I. Plan for the Composition, Administration, Management and Compensation of the Panel of Private Attorneys under the Criminal Justice Act.

II. Addendum to the plan for the implementation of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006(A).

Adopted this 28th day of February 1994.

Signed by Judges of the Court

APPENDIX I

I. COMPOSITION OF PANEL OF PRIVATE ATTORNEYS

A. CJA PANEL

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the “CJA Panel”) who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the “Panel Selection Committee,” established pursuant to paragraph B. of this Plan. Members of the CJA Panel shall serve at the pleasure of the Court.
2. Size. The Court shall fix, periodically, the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CJA caseload, yet small enough so that panel members will receive an adequate number of appointments to maintain their proficiency in federal criminal defense work, and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this District, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Sentencing Guidelines, the Criminal Justice Act and the Guidelines for the Administration of the CJA (Vol. VII, Guide to Judiciary Policies and Procedures).
4. Admission of Pro Hac Vice Attorney. In exceptional circumstances, if the judge or magistrate judge presiding over the case determines that the appointment of an attorney, who is not a member of the CJA Panel, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA Panel pro hac vice and appointed to represent the defendant. The attorney, who may or may not maintain an office in this District, must possess such qualities as would qualify him or her for admission to the CJA Panel as set forth in this Plan.
5. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. PANEL SELECTION COMMITTEE

Within thirty days following the date that the CDO becomes operational, a Panel Selection Committee shall meet for the purpose of developing a panel of attorneys who will be available for appointment to specific cases. The panel selection committee shall consist of a District Judge and a Magistrate Judge both appointed by the Chief District Judge in this District, the federal defender, and a member of the criminal defense bar of this district in good standing appointed by a majority vote of the remaining committee members. The Committee shall select its own chairperson who will be responsible for scheduling meetings of the Committee at least once every six months and shall be responsible for conducting the business meetings of the Committee. The Panel Selection Committee shall be responsible

for developing and maintaining a panel of attorneys available for appointment to cases in this District. The panel will consist of private attorneys regularly practicing before the court who have demonstrated their professional responsibilities, interests, and ability in criminal practice and in representing the legally indigent.

Application forms for panel membership shall be made available by the Clerk of this Court to any member of the bar upon request. Completed applications shall be submitted to the Clerk of the Court who will refer these applications to the members of the Panel Selection Committee. At its meetings, the Committee shall review the existing panel membership, applications for membership, and shall make additions or deletions to the panel membership as may be appropriate. The Committee will condition panel membership upon a continued demonstrated proficiency, ability, and interest in representation of the legally indigent. In determining the membership of the panel, the Committee shall also consider comments and recommendations of the judges and magistrate judges of this court.

The Panel Selection Committee shall establish a “CJA Training panel,” consisting of attorneys who do not have the experience required for membership on the CJA panel. Except as otherwise provided below, training panel members may be assigned by the court to assist members of the CJA panel in a “second chair” capacity. Training panel members shall not be eligible to receive appointments independently, and will not receive compensation for their services in assisting CJA panel members. Prior service on the CJA training panel is not a requirement for membership on the CJA panel, nor will service on the training panel guarantee admission of attorney to the CJA panel.

After each meeting of the Panel Selection Committee or at any time after the membership of the CJA panel or training panel has been amended, the Committee shall distribute a copy or amended copy of the panel of attorneys to each judge and magistrate judge of this District. A copy of this list shall also be made available to the CDO, the U.S. Attorney’s Office, U.S. Probation, U.S. Pretrial Services, and the U. S. Marshals Service. A copy of the current list of the panel of attorneys shall be kept on file with the Clerk of Court.

II. SELECTION FOR APPOINTMENT

A. MAINTENANCE OF LIST OF DISTRIBUTION OF APPOINTMENTS

The Clerk of the Court shall maintain a current list of all attorneys included on the CJA Panel, with current office addresses and telephone numbers, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each judge and magistrate judge. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proportion of appointments between attorneys from the Community Defender Organization and CJA panel attorneys, according to the formula described in the CJA Plan for the District.

B. METHOD OF SELECTION

Appointments from the list of panel attorneys should be made on a rotational basis, subject to the Court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, and geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel, and quality representation for each CJA defendant. The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Community Defender Organization and the panel of private attorneys.

In the event of an emergency, i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office, the presiding judge or magistrate judge may appoint the federal defender or any attorney from the CJA list. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court as to the name of the attorney appointed and the date of the appointment.

III. COMPENSATION - FILING OF VOUCHERS

Claims for compensation shall be submitted, on the appropriate CJA form, to the office of the Clerk of Court. The Clerk of Court shall review the claim form for mathematical and technical accuracy, and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures) and, if correct, shall forward the claim form for the consideration and action of the presiding judge or magistrate judge.

APPENDIX II

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

ADDENDUM TO THE PLAN FOR THE IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED, 18 U.S.C. § 3006A

WHEREAS, the number of death row inmates who will exhaust their state court remedies and be in a position to seek federal habeas corpus relief in this district is expected to increase;

WHEREAS, representation of persons who have been convicted and sentenced to death requires a specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and Eighth Amendment jurisprudence and entails an extraordinary commitment of time;

WHEREAS, this court is responsible for ensuring the adequate representation of financially eligible persons seeking federal habeas corpus relief when such representation is required in the interest of justice;

WHEREAS, the Alabama Capital Representation Resource Center, Inc. (hereinafter referred to as “the Resource Center”) is a non-profit defense counsel service designed to furnish representation, and assistance in connection with the representation of death-sentenced inmates in the state of Alabama;

WHEREAS, subsection (g) of the Criminal Justice Act of 1964, as amended, 18 U.S.C. § 3006A (hereinafter referred to as “the Act”) authorizes the establishment of Community Defender Organizations in adjacent districts in which at least 200 persons annually require the appointment of counsel, and the Northern, Middle and Southern Districts of Alabama meet that requirement,

IT IS THEREFORE ORDERED, that the Plan for the Implementation of the Criminal Justice Act for the Southern District of Alabama, (dated December 28, 1987) is hereby amended to provide for the designation of the Resource Center as a Community Defender Organization in accordance with subsection (g)(2)(B) of the Act, and subject to the conditions set forth below:

1. The Resource Center is authorized by this Plan to provide representation, assistance, information, and other related services to eligible persons and appointed attorneys in connection with federal. death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Act. As provided in the Criminal Justice Act Plans for the Northern and Middle Districts of Alabama, the Resource Center also may provide such services in those courts. The by-laws of the Resource Center are incorporated as part of the Plan, and a copy of said by-laws shall be maintained by the Clerk of Court and attached to the original of this

Plan.

2. The Resource Center shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Procedures), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.

3. The Resource Center shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the next fiscal year.

4. The Resource Center shall furnish to this court the initial roster of staff attorneys and shall report any changes thereto to the court.

5. The primary goal of the Resource Center will be to assist the Court in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end the Resource Center will perform the following functions:

a. The Resource Center shall monitor all capital litigation in the state of Alabama.

b. The Resource Center shall screen and recruit qualified members of the private bar who are willing to provide representation in death penalty post-conviction proceedings in federal court and submit a list of such attorneys to the court for approval as a “Special Death Penalty Habeas Corpus Panel”.

c. In each federal death penalty habeas corpus case in which the court has determined that counsel shall be appointed, the Resource Center shall provide to the court the name of the next available member of the “Special Death Penalty Habeas Corpus Panel”. In cases where the interest of justice requires the appointment of more than one attorney, the Resource Center shall furnish the name of two attorneys.

d. The Resource Center shall be authorized to serve as counsel of record, and shall recommend to the Court those cases in which its appointment as counsel of record is appropriate.

e. Upon the request, pursuant to subsection (e) of the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, of appointed or bono counsel in a federal habeas corpus death penalty case the Resource Center shall provide consulting services in such areas as, but not limited to, records completion, exhaustion of state remedies, identification of issues, review of draft pleadings and briefs.

f. The Resource Center will coordinate resources with other state and national organizations providing legal assistance to death-sentenced inmates.

g. The Resource Center will maintain a brief bank and clearinghouse of materials to assist lawyers in death penalty habeas corpus cases in federal courts.

h. The Resource Center will perform such other tasks as may be necessary to ensure that adequate representation is provided to financially eligible persons in federal death penalty habeas corpus proceedings.

6. In order to ensure the effective supervision and management of the Resource Center, its Executive Director or Chief Attorney will be responsible for the assignment of cases (both as counsel of record and as consultant) among the staff attorneys in that office. Accordingly, the court will assign cases in the name of the Executive Director or Chief Attorney rather than in the name of individual staff attorneys.

7. The Resource Center may obtain investigative, expert, or other services without regard to the requirements or limitations set forth in the Plan dated December 28, 1987, with respect to procurement of such services by panel attorneys, provided that total expenditures of the organization for investigative, expert, and other services do not exceed its grant authorization for these specific categories.

The provisions of the Plan dated December 28, 1987 shall remain in effect except to the extent that they are inconsistent with the provisions of this addendum, in which case the provisions of the addendum shall govern.

This amendment shall take effect upon its approval by the Judicial Council of the Eleventh Circuit.

ORDERED for the court, this the 24th day of May, 1988.

William Brevard Hand
Chief Judge